



# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 482

## IN THE MATTER OF JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, INC.

### DISPOSITION AGREEMENT

This Disposition Agreement (“Agreement”) is entered into between the State Ethics Commission (“Commission”) and John Hancock Mutual Life Insurance Company, Inc. (“Hancock”) pursuant to §5 of the Commission’s Enforcement Procedures. This Agreement constitutes a consented to final Commission order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On June 16, 1993, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into allegations that Hancock had violated the conflict of interest law, G.L. c. 268A. The Commission has concluded the inquiry and, on January 11, 1994, voted to find reasonable cause to believe that Hancock violated G.L. c. 268A, §3.

The Commission and Hancock now agree to the following findings of fact and conclusions of law:

1. Hancock, a Massachusetts corporation, is the nation’s sixth largest life insurer doing business in all 50 states. It offers an array of life, health and investment products. It has over 10,000 employees nationwide. Its 1992 Statement of Financial Position shows total assets of approximately \$41 billion, and revenue of approximately \$7.75 billion.
2. Hancock is a Massachusetts domiciled life insurer. As such, its activities are more comprehensively regulated by Massachusetts than any other state.
3. Hancock has a Government Relations Department whose responsibilities include monitoring Massachusetts legislation of interest to Hancock and presenting Hancock’s position on such legislation to legislators.
4. From 1982 through May 1993, Raeburn B. Hathaway, Jr. directed the Government Relations Department.<sup>1/</sup> Throughout this time, Hathaway was a Hancock vice-president, and from 1985 through 1993, he was corporate secretary. As head of the Government Relations Department and the Office of the Secretary, Hathaway answered directly to Hancock’s president.
5. Between 1982 and May 1993, the Government Relations Department had one senior registered Massachusetts lobbyist who was responsible for Massachusetts legislation, F. William Sawyer.<sup>2/</sup> At various times, Sawyer had an assistant who was also a registered Massachusetts lobbyist to help him with his responsibilities for dealing with Massachusetts legislation. Those assistants included the following: from approximately 1982 to 1986, Barbara Burgess; and from 1990 through early 1992, Ralph Scott.
6. According to the Government Relations Department’s yearly internal reports, between 1985 and 1993 it identified, on average, approximately 125 bills filed with the Massachusetts Legislature deemed to be of interest to Hancock. In those same years, on average, approximately 10 such bills were enacted into law. Examples of bills of interest to Hancock, and other life insurers doing business in Massachusetts, included legislation mandating various kinds of insurance coverage, including coverage of AIDS without prior testing; bills placing restrictions on insurance companies investing in foreign countries; bills requiring gender neutral premium rates; bills imposing a new sales tax on Massachusetts service providers, including insurance companies and their subsidiaries; bills that would potentially

subject life insurance companies to the higher bank tax excise rate; bills allowing the Savings Bank Life Insurance industry to convert to a stock company and thereby compete more directly with insurance companies; bills allowing the conversion of domestic mutual life insurance companies (such as Hancock) to stock companies; bills dealing with universal health care; bills dealing with long term care; and bills dealing with community reinvestment obligations. Many of these bills had a potential significant economic impact on Hancock and other life insurers doing business in Massachusetts.<sup>3/</sup>

7. As stated in a 1992 Hancock legislative consultant job description, in order to present Hancock's position on legislation to legislators, Government Relations Department legislative consultants were "to establish and maintain relationships with legislators." That same job description further states,

In Massachusetts, the lobbying effort involves frequent personal presentations of testimony before legislative committees as well as daily appearances at the State House while the legislature is in session in order to develop contacts with legislators, staff personnel, and others in state government.

8. Consistent with the above-cited job description for a Hancock legislative consultant, Sawyer did develop many strong, effective, personal relationships with Massachusetts legislators.<sup>4/</sup>

9. The reason the Hancock lobbyists created these relationships was to give Hancock access to these legislators so that Hancock's position could be effectively communicated.

10. Hancock's lobbyists believed that they used this access effectively. Government Relations Department reports prepared by Sawyer make clear that in his view many of the above described bills were either enacted or defeated due, at least in part, to the efforts of Hancock's lobbyists.

For example, in the above-mentioned 7/30/87 report, Sawyer stated, as to a bill (S. 1629) which would have banned AIDS testing,

Fortunately, lobbyists from Hancock and other insurers were able to educate legislators on the implications of Senate 1629. [The Health Care Committee] voted the bill into a study. In the Massachusetts legislature, this means it's unlikely there will be further action on the bill this session.

According to a 10/14/88 report regarding Hancock's retaining a substantial portion of the state employees benefit contract previously awarded competitively to Hancock by an independent state agency, and an effort by the employees' union to rescind that award and give it back to Blue Cross/Blue Shield through the filing of legislation, Sawyer stated,

Hancock's Government Relations lobbyists, ably assisted by many employees in the home office and the Andover field office, were able to stem the tide to take the contract away from Hancock. Lobbying efforts resulted in a 32 to 118 House defeat of the potentially damaging proposal.

In the 1/16/90 report identified above, Sawyer stated as to S.2087, "We were successful in adding an amendment in the Senate that would have excluded the life company's operations from the breadth of this legislation."

In a 1/10/92 memo as to the Community Reinvestment Act (H.3248), Sawyer commented, "We vigorously opposed this legislation citing our present community efforts. As a result, this bill was placed in a study order by the Insurance Committee where it died."

11. One way Hancock's lobbyists created strong relationships with Massachusetts legislators was by entertaining them through meals and drinks, golf, and sporting and theatrical events. In other words, the entertainment created and/or furthered goodwill and personal relationships which, in turn, helped achieve access to the legislators.<sup>5/</sup>

12. Between August 1, 1987, and May 30, 1993, almost six years, Hancock's lobbyists entertained individual Massachusetts legislators with meals and golf worth \$50 or more on approximately 240 instances.<sup>6/7/</sup>

On occasion, these meals were quite expensive, costing in the vicinity of \$100 per person. Frequently, the expenses of the legislator's spouse or guest were also covered. Many of these meals took place at out-of-state resort settings, including, for example, St. Thomas, Virgin Islands; Amelia Island, Florida; Disney World, Florida; and Las Palmas,

Puerto Rico.

Hancock lobbyists, primarily Sawyer, also provided a significant amount of free golf. There are approximately a dozen instances where Hancock lobbyists treated legislators to rounds of golf at expensive courses, such as Sawgrass in Florida which costs approximately \$140 per round per person.<sup>8/</sup>

13. In addition, on numerous occasions during the same time period, Hancock entertained Massachusetts legislators at the corporate boxes it maintains at Fenway Park and Boston Garden, or through its tickets for events at Foxboro Stadium and the Wang Center. For the period August 1, 1987 through June 30, 1993, these corporate box seats and these tickets, with the exception of Foxboro Stadium, cost Hancock between \$60 and \$80 each, excluding any food and beverages. For the most part, Hancock's records do not indicate which legislators were entertained by its lobbyists in these corporate boxes or via Foxboro or Wang tickets. Hancock records do indicate the dollar value of the tickets that were charged to Government Relations each year.<sup>9/</sup> Those numbers, assuming an average ticket price of \$70, indicate that the Government Relations Department received on average approximately 100 tickets per year. While some of those tickets were apparently used by department employees, the bulk were used for business entertainment. Hancock has stipulated that its lobbyists used these corporate box seats and/or tickets on at least 10 instances a year in entertaining Massachusetts legislators (and at times their guests) where the value of the seats or tickets was \$50 or more. Therefore, Hancock has stipulated that there were at least 60 such instances of entertainment during the relevant time period.

14. In summary, when tickets (60 instances) are added to food and golf expenditures (240 instances), there were at least 300 instances of Hancock, through its lobbyist employees, providing individual Massachusetts legislators with \$50 or more of entertainment value during the relevant time period. Those 300 instances include entertainment of more than one legislator at an event. The number of events encompassed in this figure is approximately 150, or approximately 25 per year.

15. The following are examples of the entertainment Sawyer provided to Massachusetts legislators:<sup>10/</sup>

a. Las Palmas del Mar, Puerto Rico

Between December 8, 1992, and December 14, 1992, Sawyer, according to his records, stayed at Las Palmas del Mar, an oceanfront resort located on the southern side of Puerto Rico, approximately 40 miles from downtown San Juan. Sawyer's records indicate that his stay was in connection with a Council of State Government's Conference. (The conference ran between December 9 and December 12, 1992, at the El Condado Hotel in San Juan.)<sup>11/</sup>

According to his records, Sawyer provided entertainment of \$50 or more in value to each of five legislators at Las Palmas at a total cost of approximately \$1700. This entertainment included golf, meals and drinks.

In addition, on Friday night, December 11, 1992, Sawyer hosted a \$2,632.50 dinner in San Juan at the La Picola Fontana. That dinner was attended, according to Sawyer's records, by nine Massachusetts legislators, six of their guests, eight Massachusetts lobbyists and their guests, plus Sawyer. Sawyer had arranged for this dinner several weeks in advance. It cost Hancock a predetermined flat rate of \$87.50 per person.

b. Amelia Island, Florida

From March 10 through March 14, 1993, Sawyer was present for a Conference of Insurance Legislators conference held at the Amelia Island Plantation Resort in Florida. Several other Massachusetts lobbyists and 10 Massachusetts legislators were present as well.<sup>12/</sup>

According to his records, Sawyer provided entertainment of \$50 or more in value to each of nine legislators at a total cost of approximately \$1,600. This entertainment included golf, meals and drinks at the Amelia Island Plantation resort. It also included golf at the nearby Sawgrass course where fees and cart costs per person ranged from \$138 to \$148 each.

c. Cape Cod

Each July between 1988 and 1991, Sawyer arranged for himself and several legislators to play golf at the Hyannisport Club. Sawyer paid for the fees. In addition, in each of those years he paid for an expensive dinner the same or the next day after the golf outing for the members of his foursome, their guests, and certain other legislators who were on the

Cape. In 1988, this dinner was at the Regatta in Cotuit. In 1989 through 1991, the dinner was at the Cranberry Moose Restaurant in Yarmouthport. The cost of the dinner per person was approximately \$80. The total cost of the dinner each year was as follows: 1988 (\$736), 1989 (\$1,045), 1990 (\$1,132), and 1991 (\$879).

16. Section 3(a) of G.L. c. 268A, prohibits anyone from directly or indirectly giving a state employee anything of substantial value for or because of any official act performed or to be performed by the state employee.

17. Massachusetts legislators are state employees.

18. Anything with a value of \$50 or more is of substantial value for §3 purposes.<sup>13/</sup>

19. By giving individual Massachusetts legislators entertainment worth \$50 or more while each such legislator was in a position to take official action concerning proposed legislation which could affect Hancock's financial interests, Hancock's lobbyists gave those legislators a gift of substantial value for or because of acts within their official responsibility performed or to be performed by them. In so doing, Hancock's lobbyists violated G.L. c. 268A, §3(a).<sup>14/</sup>

20. As a corporation, Hancock acts through and is responsible for the conduct of its employees. This is so even if the conduct is unauthorized.<sup>15/</sup> Therefore, in that Hancock's lobbyists violated §3 by providing certain legislators with free meals, golf, tickets, and so forth, Hancock also violated G.L. c. 268A, §3(a).

21. The Commission is aware of no evidence that any of the foregoing gifts were given to legislators with the intent to influence any specific official act by them as legislators. The Commission is also aware of no evidence that the legislators in return for gifts took any official action concerning any proposed legislation which would have affected Hancock. In other words, the Commission is aware of no evidence that there was a quid pro quo. However, even if the conduct of Hancock's legislative agents were only intended to create goodwill, it was still impermissible.

22. There are certain exacerbating factors here. As of May 30, 1985, Sawyer had read and placed in Hancock's files a copy of *Commission Advisory No. 8*. Nevertheless, Sawyer continued to illegally entertain Massachusetts legislators as described above long after he had read *Advisory No. 8*.<sup>16/</sup>

Moreover, Government Relations Department lobbyists paid particularly close attention to the Commission's *In re Flaherty* decision issued on December 10, 1990, as discussed above. Notwithstanding this decision, and an internal January 21, 1991 Hancock memo by Hancock's Legal Department warning the Government Relations Department of that decision, Government Relations Department employees continued to illegally wine and dine Massachusetts legislators. Indeed, they did not seriously curtail the frequency of their use of tickets until 1992.

23. There are also, however, certain mitigating factors. Hancock has cooperated with the Commission throughout this investigation. Moreover, it has taken prompt, aggressive, and thorough steps to correct its unlawful practices.<sup>17/</sup>

In view of the foregoing violations of G.L. c. 268A, §3(a), the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Hancock:

(1) that Hancock pay to the Commission the sum of one hundred ten thousand dollars (\$110,000.00) as a civil fine for violating G.L. c. 268A, §3(a);<sup>18/</sup>

(2) that from January 1, 1994, through December 31, 1998, Hancock, on a semi-annual basis, will file a written report with the Division of Public Records of the Office of the Secretary of State, with a copy to the State Ethics Commission, of all expenditures made by Hancock or its employees, and by any independent consultants on behalf of Hancock, involving any Massachusetts state, county or municipal employee; such reports will identify the date, amount, and nature of the expenditure; the identity of the public employee involved; and, if a Hancock employee or independent consultant incurred the expenditure, the identity of that employee or consultant; and

(3) that Hancock waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement in any related administrative or judicial proceeding to which the Commission is or may be a party.

**Date: March 21, 1994**

<sup>1/</sup> After Hancock conducted an internal investigation in April and early May 1993 of the Government Relations Department's entertaining Massachusetts officials, it transferred the supervisory responsibilities for the department from Hathaway to its General Counsel's office, and accepted Hathaway's early retirement.

<sup>2/</sup> After completing the investigation cited in the preceding footnote, Hancock, in late May 1993, transferred Sawyer to a department called the Retail Sector.

<sup>3/</sup> For example, in a 7/30/87 Government Relations Report, Sawyer wrote as to H.573, which would have affected the manner in which domestic insurance companies reinsured credit risks,

House 573 eliminates a serious competitive problem for Hancock and other domestic life companies competing with foreign insurers. ... This will significantly improve Hancock's market place position [emphasis in the original].

A 12/13/88 Government Relations Report states as to S. 1790, a bill restructuring the regulation of group credit life and group credit accident and health insurance, "This [bill] significantly increases John Hancock's marketing opportunities."

In a 1/16/90 Government Relations Report, Sawyer wrote,

This proposal [S.2087] sought to tax entities providing "bank-like" services under the bank tax rate, but because of the broad and sweeping language used could have included John Hancock Life Insurance Company and its subsidiaries. This would have amounted to a double tax...

<sup>4/</sup> In the manager's comments section of Sawyer's 1984 employee evaluation, Hathaway stated, "Bill has established many strong relationships with public officials - particularly in the Massachusetts Legislature where he is a most effective representative of John Hancock's interests."

<sup>5/</sup> Hancock lobbyist Burgess testified, "Certainly if somebody knows who you are—if you've had dinner together, if you've enjoyed each other's company—and if you call them, they're likely to return your call."

<sup>6/</sup> The value of this entertainment was approximately \$26,000. In arriving at the \$50 or more expense figure, the Commission has included all expenses on a single day or at a single conference attributable to a specific legislator. For example, a lunch and dinner on a given day for a legislator might have each cost less than \$50, but if totalled they equaled or exceeded \$50, they have been included in the \$26,000 figure. In addition, where Hancock paid for a legislator's spouse's expenses, those expenses have been attributed to the legislator.

According to Hancock's records, a substantial portion of this entertainment went to legislators who served on the Insurance or Health Care Committees.

<sup>7/</sup> Sawyer's expense records indicate that he spent \$50 or more in the aggregate on individual legislators on 207 instances for a total expenditure of approximately \$24,000. Those same records indicate that he spent \$100 or more on individual legislators in the aggregate in a calendar year on 70 instances.

Burgess' expense records indicate that she spent \$50 or more in the aggregate on individual legislators on five instances for a total expenditure of approximately \$291. Those same records indicate that she spent \$100 or more on individual legislators in the aggregate in a calendar year on three instances.

Scott's expense records indicate that he spent \$50 or more in the aggregate on individual legislators on 27 instances for a total expenditure of approximately \$1,792.56. Those same records indicate that he spent \$100 or more on individual legislators in the aggregate in a calendar year on 16 instances.

<sup>8/</sup> The most expensive gratuity documented by Hancock's records was a \$3,200 trip to the Super Bowl in January 1986 for a legislator and his wife. This is beyond the Commission's statute of limitations. In any event, this expense is atypical. There is no other expense remotely similar to it in size. The next most expensive single expense would be an expensive dinner or round of golf.

Sawyer's expense records indicate that in January 1991, Hancock jointly paid, with five other insurance companies, the cost of a going away dinner for a legislator. Hancock and these companies also gave that legislator a set of golf clubs valued at \$404.25, of which Hancock's contribution was \$67.38, at that dinner.

<sup>9/</sup> Those dollar values are as follows: 1988 (\$999.99), 1989 (\$8,159), 1990 (\$12,869), 1991 (\$11,822), 1992 (\$4,418), and 1993 (\$6,350).

<sup>10/</sup> Because Sawyer invoked his Constitutional rights against self-incrimination and refused to testify before the Commission, because certain legislators have contested the accuracy of his records, and because of the confidentiality requirements contained in c. 268B, §4 concerning ongoing Commission investigations, legislators who allegedly received gratuities are not named in this disposition agreement.

<sup>11/</sup> The Commission has determined that eight lobbyists, including Sawyer, and eight legislators stayed at Las Palmas at this time. Several of the lobbyists paid for numerous expenses of the legislators. Most of the legislators staying at Las Palmas did not attend any of the conference sessions. (Several explained that the combination of the distance from Las Palmas to San Juan and the traffic made it impractical to try to get to the conference.) Basically, they appear to have spent their time enjoying the facilities at or near Las Palmas.

<sup>12/</sup> Information received by the Commission during its investigation indicates that several of these legislators did not attend any of the conference sessions. As was the case at Las Palmas, several lobbyists paid for numerous entertainment expenses of the legislators.

<sup>13/</sup> See *Commonwealth v. Famigletti*, 4 Mass. App. 584 (1976); *EC-COI-93-14*.

<sup>14/</sup> For §3 purposes, it is unnecessary to prove that the gratuities given were generated by some specific identifiable act performed or to be performed. As the Commission explained in Advisory No. 8, issued May 14, 1985, prohibiting private parties from giving free tickets worth \$50 or more to public employees who regulate them,

[E]ven in the absence of any specifically identifiable matter that was, is or soon will be pending before the official, §3 may apply. Thus, where there is no prior social or business relationship between the giver and the recipient, and the recipient is a public official who is in a position to use his authority in a manner which could affect the giver, an inference can be drawn that the giver was seeking the goodwill of the official because of a perception by the giver that the public official's influence could benefit the giver. In such a case, the gratuity is given for as yet unidentified "acts to be performed."

Specifically, §3 applies to generalized goodwill-engendering entertainment of legislators by private parties, even where no specific legislation is discussed. *In re Flaherty*, 1991 SEC 498, issued December 10, 1990 (majority leader violates §3 by accepting six Celtics tickets from billboard company's lobbyists). *In re Massachusetts Candy and Tobacco Distributors, Inc.*, 1992 SEC 609 (company representing distributors violates §3 by providing a free day's outing (a barbecue lunch, golf or tennis, a cocktail hour and a clam bake dinner), worth over \$100 per person, to over 50 legislators, their staffers and family members, with the intent of enhancing the distributors' image with the Legislature and where the legislators were in a position to benefit the distributors).

Section 3 applies to meals and golf, including those occasions motivated by business reasons, for example, the so-called "business lunch". *In re U.S. Trust*, 1988 SEC 356.

Finally, §3 applies to entertainment gratuities of \$50 or more even in connection with educational conferences. *In re Stone and Webster*, 1991 SEC 522, and *In re State Street Bank*, 1992 SEC 582.

On the present facts, §3 applies to entertainment of legislators by Hancock's lobbyists where the intent was generally to create goodwill and the opportunity for access, even though specific legislation was not discussed.

<sup>15/</sup> At all relevant times, Hancock had a written policy which provided in part, "No officer or an employee may receive or give any gift or other favor of \$50 or more in value from or to anyone with whom the company has or is likely to have any business dealings."

<sup>16/</sup> In addition, the Government Relations Department's lobbyists had been repeatedly warned, through memos from Hancock's Legal Department beginning in 1979, that as lobbyists they were subject to a rule that prohibited them from giving gifts to a public official with an aggregate value of \$100 in any calendar year regardless of whether in giving such gifts they were merely socializing or in fact attempting to influence specific legislation. [See G.L. c. 268B, §6 and c. 3, §43, last &.] These memos made clear that the \$100 restriction applied to meals as well as other forms of entertainment. Nevertheless, as indicated above, Hancock's lobbyists frequently provided individual legislators with entertainment worth \$100 or more in a single calendar year. (Hancock has agreed to refer its records evidencing violations of c.3, §43, last & to the Secretary of State's office.)

<sup>17/</sup> Within approximately one month of having first been contacted by the *Boston Globe* regarding its lobbyists entertaining Massachusetts legislators, Hancock conducted an internal inquiry of its practices, accepted Hathaway's early retirement, reassigned Sawyer to a non-Government Relations position, transferred responsibility for the Government Relations Department to the Legal Department, began cooperating with the Ethics Commission, and adopted new written operating procedures for entertainment expenses. In the fall of 1993, Hancock disseminated to all of its Government Relations employees a memorandum summarizing the company's policy on expenditures for public officials. The policy reflects the Ethics Commission's position regarding gratuities. At the same time, Hancock conducted training sessions for all of its Government Relations employees regarding Massachusetts conflict of interest and lobbying laws.

<sup>18/</sup> As described above in footnote 7, Hancock's lobbyists also violated c. 268B, §6 by giving individual legislators more than \$100 in entertainment in the aggregate in a calendar year on numerous occasions. Most of the c. 268B, §6 violations are also c. 268A, §3 violations, however. Therefore, the Commission has not imposed a separate fine for those c. 268B, §6 violations. That the fine is not larger recognizes Hancock's cooperation and prompt corrective measures.